

- Application Serial No. 10/727,713
Response to Office Action Mailed September 6, 2006

REMARKS

Claims 11-18 are currently pending in this application. Claim 11 is the only independent claim and claims 12-18 depend therefrom.

Claims 11-18 stand rejected as being anticipated under 35 U.S.C. §102(b) by U.S. Pat. No. 6,164,501 (Stradella). The Examiner has asserted that Stradella teaches a device for dispensing a fluid as recited in claim 11. Applicant traverses this rejection.

The apparatus of Stradella does not disclose all the features recited in claim 11. Stradella teaches a device for dispensing fluid comprising a first container (1) having a first chamber capable of being filled with a fluid. However, Stradella fails to disclose a second chamber having all of the features recited in claim 11.

The Examiner considers the actuator member (6) to be a second container having a second chamber adapted to receive fluid from the first chamber. Applicant respectfully submits that the actuator member (6) is not a second container, and rather that the sole function of the actuator member (6) is to move the element (2) between a rest position in which the opening of the container (1) is sealed and an actuated position in which the element (2) is forced into the container (1). See Stradella at col. 4, lines 34-65.

The actuator member (6) is a solid member having a bore (10) therethrough. This is illustrated in Stradella Figure 1 by the cross sectional hatching of the actuator member (6). The actuator member (6) does not receive and store fluid from the first container (1). Instead, the actuator member (6) merely allows the fluid to pass therethrough as a result of the bore (10). Therefore, the actuator member (6) is not a container or bottle as considered by the Examiner. Because the actuator member (6) cannot be considered as a second container (since it cannot contain any fluid), it follows that the device of Stradella does therefore not disclose a second container having a piston means slideably receivable within the first chamber of the first container.

Furthermore, the Examiner asserts that the actuator member (6) has a first portion having a first diameter and a second portion having a second diameter. This is incorrect, because the disclosure of Stradella unquestionably shows that the diameter of the bore (10) is constant through the piston (7) and the actuator member (6). See Stradella Figure 1, showing the expulsion channel (10) having one constant diameter.

Specifically, the rejection is incorrect in stating that “the bore (10) has a first portion [inside the bottle (6) diameter] having a first diameter and a second portion [the neck of the bottle (6)] having a second diameter which is smaller than the first diameter.” There is no distinction between the bore (10) extending through different portions of the bottle (6); as previously stated, the bore (10) is constant and of a single diameter. Even when the actuator member (6) has pushed the piston (7) through the passage (3) to force out the ball (5) so that the piston (7) extends into the first chamber (1), there is still only one bore (10) having a constant diameter extending through the piston (7) and the actuator member (6). See Stradella Figure 2. Therefore, even if the actuator member (6) were to be considered as a second container (which as described above it cannot be), the bore (10) through the actuator member (6) lacks a first portion having a first diameter and a second portion having a second diameter which is smaller than the first diameter, as required by claim 11.

Based on the foregoing, claim 11 is patentable over Stradella. Claims 12-18 all depend from claim 11 and, therefore, without prejudice to their individual merits, they are also patentable over Stradella. Reconsideration and withdrawal of the rejection of claims 11-18 of this application is respectfully requested.

Accordingly, Applicant respectfully submits that the present application, including claims 11-18, is in condition for allowance and a notice to that effect is respectfully requested. If the Examiner believes that direct communication with Applicants’ representative will expedite consideration of this application, the Examiner is invited to contact the undersigned.

Respectfully submitted,
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